

rity Service” and “The qualifications” for “In the case of positions designated for special agents, the qualifications”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-236 applicable with respect to officials, offices, and bureaus of Department of State when executive orders, regulations, or departmental directives implementing the amendments by sections 161 and 162 of Pub. L. 103-236 become effective, or 90 days after Apr. 30, 1994, whichever comes earlier, see section 161(b) of Pub. L. 103-236, as amended, set out as a note under section 2651a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4044 of this title.

§ 4824. Contracting authority

The Secretary of State is authorized to employ individuals or organizations by contract to carry out the purposes of this Act, and individuals employed by contract to perform such services shall not by virtue of such employment be considered to be employees of the United States Government for purposes of any law administered by the Office of Personnel Management (except that the Secretary may determine the applicability to such individuals of any law administered by the Secretary concerning the employment of such individuals); and such contracts are authorized to be negotiated, the terms of the contracts to be prescribed, and the work to be performed, where necessary, without regard to such statutory provisions as relate to the negotiation, making and performance of contracts and performance of work in the United States.

(Pub. L. 99-399, title II, §206, as added Pub. L. 105-277, div. C, title I, §104, Oct. 21, 1998, 112 Stat. 2681-586.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 99-399, Aug. 27, 1986, 100 Stat. 853, known as the Omnibus Diplomatic Security and Antiterrorism Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 4801 of this title and Tables.

SUBCHAPTER III—PERFORMANCE AND ACCOUNTABILITY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4802 of this title.

§ 4831. Accountability Review Boards

(a) In general

(1) Convening a Board

Except as provided in paragraph (2), in any case of serious injury, loss of life, or significant destruction of property at, or related to, a United States Government mission abroad, and in any case of a serious breach of security involving intelligence activities of a foreign government directed at a United States Government mission abroad, which is covered by the provisions of this chapter (other than a facility or installation subject to the control of a United States area military commander), the Secretary of State shall convene an Accountability Review Board (in this subchapter referred to as the “Board”). The Secretary

shall not convene a Board where the Secretary determines that a case clearly involves only causes unrelated to security.

(2) Department of Defense facilities and personnel

The Secretary of State is not required to convene a Board in the case of an incident described in paragraph (1) that involves any facility, installation, or personnel of the Department of Defense with respect to which the Secretary has delegated operational control of overseas security functions to the Secretary of Defense pursuant to section 4805 of this title. In any such case, the Secretary of Defense shall conduct an appropriate inquiry. The Secretary of Defense shall report the findings and recommendations of such inquiry, and the action taken with respect to such recommendations, to the Secretary of State and Congress.

(b) Deadlines for convening Boards

(1) In general

Except as provided in paragraph (2), the Secretary of State shall convene a Board not later than 60 days after the occurrence of an incident described in subsection (a)(1) of this section, except that such 60-day period may be extended for one additional 60-day period if the Secretary determines that the additional period is necessary for the convening of the Board.

(2) Delay in cases involving intelligence activities

With respect to breaches of security involving intelligence activities, the Secretary of State may delay the establishment of a Board if, after consultation with the chairman of the Select Committee on Intelligence of the Senate and the chairman of the Permanent Select Committee on Intelligence of the House of Representatives, the Secretary determines that the establishment of a Board would compromise intelligence sources or methods. The Secretary shall promptly advise the chairmen of such committees of each determination pursuant to this paragraph to delay the establishment of a Board.

(c) Notification to Congress

Whenever the Secretary of State convenes a Board, the Secretary shall promptly inform the chairman of the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives—

- (1) that a Board has been convened;
- (2) of the membership of the Board; and
- (3) of other appropriate information about the Board.

(Pub. L. 99-399, title III, §301, Aug. 27, 1986, 100 Stat. 859; Pub. L. 100-204, title I, §156(a), Dec. 22, 1987, 101 Stat. 1354; Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title VI, §608], Nov. 29, 1999, 113 Stat. 1536, 1501A-458.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original “titles I through IV”, meaning titles I through IV of Pub. L. 99-399, Aug. 27, 1986, 100 Stat. 855, known as the Diplomatic Security Act, which is classified principally to this chapter. For complete classification

of titles I through IV of Pub. L. 99-399 to the Code, see Short Title note set out under section 4801 of this title and Tables.

AMENDMENTS

1999—Pub. L. 106-113 substituted “Review Boards” for “review” in section catchline and amended text generally. Prior to amendment, text read as follows: “In any case of serious injury, loss of life, or significant destruction of property at or related to a United States Government mission abroad, and in any case of a serious breach of security involving intelligence activities of a foreign government directed at a United States Government mission abroad, which is covered by the provisions of this chapter (other than a facility or installation subject to the control of a United States area military commander), the Secretary of State shall convene an Accountability Review Board (hereafter in this subchapter referred to as the ‘Board’). With respect to breaches of security involving intelligence activities, the Secretary of State may delay establishing an Accountability Review Board if, after consultation with the Chairman of the Select Committee on Intelligence of the Senate and the Chairman of the Permanent Select Committee on Intelligence of the House of Representatives, the Secretary determines that doing so would compromise intelligence sources and methods. The Secretary shall promptly advise the Chairmen of such committees of each determination pursuant to this section to delay the establishment of an Accountability Review Board. The Secretary shall not convene a Board where the Secretary determines that a case clearly involves only causes unrelated to security.”

1987—Pub. L. 100-204 inserted “, and in any case of a serious breach of security involving intelligence activities of a foreign government directed at a United States Government mission abroad,” after “mission abroad” in first sentence, and inserted after first sentence “With respect to breaches of security involving intelligence activities, the Secretary of State may delay establishing an Accountability Review Board if, after consultation with the Chairman of the Select Committee on Intelligence of the Senate and the Chairman of the Permanent Select Committee on Intelligence of the House of Representatives, the Secretary determines that doing so would compromise intelligence sources and methods. The Secretary shall promptly advise the Chairmen of such committees of each determination pursuant to this section to delay the establishment of an Accountability Review Board.”

§ 4832. Accountability Review Board

(a) Membership

A Board shall consist of five members, 4 appointed by the Secretary of State, and 1 appointed by the Director of Central Intelligence. The Secretary of State shall designate the Chairperson of the Board. Members of the Board who are not Federal officers or employees shall each be paid at a rate not to exceed the maximum rate of basic pay payable for level GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Board. Members of the Board who are Federal officers or employees shall receive no additional pay by reason of such membership.

(b) Facilities, services, supplies, and staff

(1) Supplied by Department of State

A Board shall obtain facilities, services, and supplies through the Department of State. All expenses of the Board, including necessary costs of travel, shall be paid by the Department of State. Travel expenses authorized under this paragraph shall be paid in accord-

ance with subchapter I of chapter 57 of title 5 or other applicable law.

(2) Detail

At the request of a Board, employees of the Department of State or other Federal agencies, members of the Foreign Service, or members of the uniformed services may be temporarily assigned, with or without reimbursement, to assist the Board.

(3) Experts and consultants

A Board may employ and compensate (in accordance with section 3109 of title 5) such experts and consultants as the Board considers necessary to carry out its functions. Experts and consultants so employed shall be responsible solely to the Board.

(Pub. L. 99-399, title III, §302, Aug. 27, 1986, 100 Stat. 859.)

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 4833. Procedures

(a) Evidence

(1) United States Government personnel and contractors

(A) With respect to any individual described in subparagraph (B), a Board may—

- (i) administer oaths and affirmations;
- (ii) require that depositions be given and interrogatories answered; and
- (iii) require the attendance and presentation of testimony and evidence by such individual.

Failure of any such individual to comply with a request of the Board shall be grounds for disciplinary action by the head of the Federal agency in which such individual is employed or serves, or in the case of a contractor, debarment.

(B) The individuals referred to in subparagraph (A) are—

- (i) employees as defined by section 2105 of title 5 (including members of the Foreign Service);
- (ii) members of the uniformed services as defined by section 101(3) of title 37;
- (iii) employees of instrumentalities of the United States; and
- (iv) individuals employed by any person or entity under contract with agencies or instrumentalities of the United States Government to provide services, equipment, or personnel.

(2) Other persons

With respect to a person who is not described in paragraph (1)(B), a Board may administer oaths and affirmations and require that depositions be given and interrogatories answered.

(3) Subpoenas

(A) The Board may issue a subpoena for the attendance and testimony of any person (other

than a person described in clause (i), (ii), or (iii) of paragraph (1)(B)) and the production of documentary or other evidence from any such person if the Board finds that such a subpoena is necessary in the interests of justice for the development of relevant evidence.

(B) In the case of contumacy or refusal to obey a subpoena issued under this paragraph, a court of the United States within the jurisdiction of which a person is directed to appear or produce information, or within the jurisdiction of which the person is found, resides, or transacts business, may upon application of the Attorney General, issue to such person an order requiring such person to appear before the Board to give testimony or produce information as required by the subpoena.

(C) Subpoenaed witnesses shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

(b) Confidentiality

A Board shall adopt for administrative proceedings under this subchapter such procedures with respect to confidentiality as may be deemed necessary, including procedures relating to the conduct of closed proceedings or the submission and use of evidence in camera, to ensure in particular the protection of classified information relating to national defense, foreign policy, or intelligence matters. The Director of Central Intelligence shall establish the level of protection required for intelligence information and for information relating to intelligence personnel, including standards for secure storage.

(c) Records

Records pertaining to administrative proceedings under this subchapter shall be separated from all other records of the Department of State and shall be maintained under appropriate safeguards to preserve confidentiality and classification of information. Such records shall be prohibited from disclosure to the public until such time as a Board completes its work and is dismissed. The Department of State shall turn over to the Director of Central Intelligence intelligence information and information relating to intelligence personnel which shall then become records of the Central Intelligence Agency. After that time, only such exemptions from disclosure under section 552(b) of title 5 (relating to freedom of information), as apply to other records of the Department of State, and to any information transmitted under section 4834(c) of this title to the head of a Federal agency or instrumentality, shall be available for the remaining records of the Board.

(d) Status of Boards

The provisions of the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) and section 552b of title 5 (relating to open meetings) shall not apply to any Board.

(Pub. L. 99-399, title III, § 303, Aug. 27, 1986, 100 Stat. 859.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (d), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4834 of this title.

§ 4834. Findings and recommendations by a Board

(a) Findings

A Board convened in any case shall examine the facts and circumstances surrounding the serious injury, loss of life, or significant destruction of property at or related to a United States Government mission abroad or surrounding the serious breach of security involving intelligence activities of a foreign government directed at a United States Government mission abroad (as the case may be) and shall make written findings determining—

(1) the extent to which the incident or incidents with respect to which the Board was convened was security related;

(2) whether the security systems and security procedures at that mission were adequate;

(3) whether the security systems and security procedures were properly implemented;

(4) the impact of intelligence and information availability; and

(5) such other facts and circumstances which may be relevant to the appropriate security management of United States missions abroad.

(b) Program recommendations

A Board shall submit its findings (which may be classified to the extent deemed necessary by the Board) to the Secretary of State, together with recommendations as appropriate to improve the security and efficiency of any program or operation which the Board has reviewed.

(c) Personnel recommendations

Whenever a Board finds reasonable cause to believe that an individual described in section 4833(a)(1)(B) of this title has breached the duty of that individual, the Board shall—

(1) notify the individual concerned,

(2) transmit the finding of reasonable cause, together with all information relevant to such finding, to the head of the appropriate Federal agency or instrumentality, and

(3) recommend that such agency or instrumentality initiate an appropriate investigatory or disciplinary action.

In determining whether an individual has breached a duty of that individual, the Board shall take into account any standard of conduct, law, rule, regulation, contract, or order which is pertinent to the performance of the duties of that individual.

(d) Reports

(1) Program recommendations

In any case in which a Board transmits recommendations to the Secretary of State under subsection (b) of this section, the Secretary shall, not later than 90 days after the receipt of such recommendations, submit a report to the Congress on each such recommendation and the action taken with respect to that recommendation.

(2) Personnel recommendations

In any case in which a Board transmits a finding of reasonable cause under subsection

(c) of this section, the head of the Federal agency or instrumentality receiving the information shall review the evidence and recommendations and shall, not later than 30 days after the receipt of that finding, transmit to the Congress a report specifying—

(A) the nature of the case and a summary of the evidence transmitted by the Board; and

(B) the decision by the Federal agency or instrumentality to take disciplinary or other appropriate action against that individual or the reasons for deciding not to take disciplinary or other action with respect to that individual.

(Pub. L. 99-399, title III, § 304, Aug. 27, 1986, 100 Stat. 861; Pub. L. 100-204, title I, § 156(b), Dec. 22, 1987, 101 Stat. 1354.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-204 inserted “or surrounding the serious breach of security involving intelligence activities of a foreign government directed at a United States Government mission abroad (as the case may be)” after first reference to “mission abroad”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4833 of this title.

§ 4835. Relation to other proceedings

Nothing in this subchapter shall be construed to create administrative or judicial review remedies or rights of action not otherwise available by law, nor shall any provision of this subchapter be construed to deprive any person of any right or legal defense which would otherwise be available to that person under any law, rule, or regulation.

(Pub. L. 99-399, title III, § 305, Aug. 27, 1986, 100 Stat. 862.)

SUBCHAPTER IV—DIPLOMATIC SECURITY PROGRAM

§ 4851. Authorization

(a) Diplomatic security program

(1) In general

In addition to amounts otherwise available for such purposes, the following amounts are authorized to be appropriated for fiscal years 1986 and 1987, for the Department of State to carry out diplomatic security construction, acquisition, and operations pursuant to the Department of State's Supplemental Diplomatic Security Program, as justified to the Congress for the respective fiscal year for “Administration of Foreign Affairs”, as follows:

(A) For “Salaries and Expenses”, \$308,104,000.

(B) For “Acquisition and Maintenance of Buildings Abroad”, \$857,806,000.

(C) For “Counterterrorism Research and Development”, \$15,000,000.

(2) Omitted

(3) **Repealed. Pub. L. 103-236, title I, § 101(c), Apr. 30, 1994, 108 Stat. 388**

(4) **Allocation of amounts authorized to be appropriated**

Amounts authorized to be appropriated by this subsection, and by the amendment made

by paragraph (2), shall be allocated as provided in the table entitled “Diplomatic Security Program” relating to this section which appears in the Joint Explanatory Statement of the Committee of Conference to accompany H.R. 4151 of the 99th Congress (the Omnibus Diplomatic Security and Antiterrorism Act of 1986).

(b) Notification to authorizing Committees of requests for appropriations

In any fiscal year, whenever the Secretary of State submits to the Congress a request for appropriations to carry out the program described in subsection (a) of this section, the Secretary shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate of such request, together with a justification of each item listed in such request.

(c) **Repealed. Pub. L. 103-236, title I, § 122(b), Apr. 30, 1994, 108 Stat. 392**

(d) Prohibition on reallocations of authorizations

Section 2696(d) of this title shall not apply with respect to any amounts authorized to be appropriated under this section.

(e) Security requirements of other foreign affairs agencies

Based solely on security requirements and within the total amount of funds available for security, the Secretary of State shall ensure that an equitable level of funding is provided for the security requirements of other foreign affairs agencies.

(f) Insufficiency of funds

In the event that sufficient funds are not available in any fiscal year for all of the diplomatic security construction, acquisition, and operations pursuant to the Department of State's Supplemental Diplomatic Security Program, as justified to the Congress for such fiscal year, the Secretary of State shall report to the Congress the effect that the insufficiency of funds will have with respect to the Department of State and each of the other foreign affairs agencies.

(g) Allocation of funds for certain security programs

Of the amount of funds authorized to be appropriated by subsection (a)(1)(A) of this section, \$34,537,000 shall be available to the Secretary of State only for the protection of classified office equipment, the expansion of information systems security, and the hiring of American systems managers and operators for computers at high threat locations.

(h) Furniture, furnishings, and equipment

(1) Use of existing furniture, furnishings, and equipment

If physically possible, facilities constructed or acquired pursuant to subsection (a) of this section shall be furnished and equipped with the furniture, furnishings, and equipment that were being used in the facilities being replaced, rather than with newly acquired furniture, furnishings, and equipment.